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IN THE

Supreme Court of the United States

October Term, 1973

No. 72-1205

STOVE, FURNACE & ALLIED APPLIANCE WORKERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, Local 123-B,

Petitioner,

vs.

GAFFERS & SATTLER, INC.,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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STOVE, FURNACE & ALLIED APPLIANCE WORKERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, Local 123-B,

Petitioner,

vs.

GAFFERS & SATTLER, INC.,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner, Stove, Furnace and Allied Appliance Workers' International Union of North America, AFL-CIO, Local 123-B, prays that a writ of certiorari issue to review a final order of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on December 5, 1972, reversing the order of the district court made pursuant to Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. 185, directing arbitration of a grievance under a collective bargaining agreement between petitioner and Gaffers & Sattler, Inc.

Opinions Below.

The Court of Appeals' order was entered on December 5, 1972, and the order and opinion are printed in Appendix A hereto.

The order directing arbitration and findings of fact and conclusions of law issued by the district court on October 26, 1970 are printed in Appendix B hereto.

Jurisdiction.

The jurisdiction of this Court to review the order of the Court of Appeals reversing the district court's order requiring arbitration is invoked under 28 U.S.C. Section 1254(1).

Questions Presented.

1. In a proceeding to compel arbitration under a collective bargaining agreement in which it appears to the court that an arbitration award in favor of the party seeking arbitration would be contrary to federal labor policy, should the court refuse, as it did in the instant case, to order arbitration, or should the court (a) order arbitration and allow the arbitrator to resolve the merits of the dispute and to attempt to fashion appropriate and lawful remedies if he rules for the party seeking arbitration, and (b) make the judicial determination as to the enforceability of such award only if and when an award is before the court?

2. Does the very process of arbitration between an employer and a union representing employees at a plant which has been (or is to be) shut down and its equipment and work transferred to another plant of the employer violate national labor policy merely because such arbitration involves the employees' claim to transfer to or assert other job rights at the other plant and a different union represents the workers at that other plant?

3. Does a union lose its right to enforce its collective bargaining agreement and arbitrate the question of the employees' right to follow the work upon the shutdown of one plant and the transfer of work and equipment to another plant owned by the same employer merely because a different union represents the workers at the other plant, as the court held, and are the employees thus left without any remedy?

4. Where the law permits arbitration of employees' claims to follow work to a non-union plant owned by the same employer upon a shutdown of their plant and transfer of work to the other plant (*Monroe Sanders Corp. v. Livingston*, 377 F. 2d 6 (2d Cir. 1967), cert. denied, 389 U.S. 83, 86 S. Ct. 971 (1967); *cf. John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 84 S. Ct. 909 (1964) may the court, as it did here, refuse to permit such arbitration because the other plant is subject to a collective bargaining agreement with another union?

Statute Involved.

Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. 185, provides in relevant part:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Statement of the Case.

Petitioner filed a petition for an order compelling arbitration with the district court, which petition was granted. On appeal, the United States Court of Appeals for the Ninth Circuit reversed the district court's action and remanded with instructions that the proceeding be dismissed.

The relevant facts are as follows: Petitioner union and Gaffers & Sattler, Inc. entered into a collective bargaining agreement in June 1968, covering certain employees at a plant referred to as the Mission plant, located in Los Angeles, California. The agreement contained a grievance and arbitration clause and by its terms remained in effect until June 30, 1971.

Several months after June 1968, Magic Chef, Inc. purchased the Mission plant and combined the Mission plant, its Industry plant, located in the City of Industry, California, and other assets into one subsidiary, called Gaffers & Sattler, Inc., the employer in this case. The collective bargaining agreement was assumed by the employer and given full force and effect.

In November, 1969, the employer announced that it would be closing the Mission plant and expanding its Industry plant. In October 1970, the Mission plant was closed and certain of its equipment and all or some of its operations were transferred to the Industry plant, which had been expanded for that purpose.

Prior to the closing of the Mission plant, petitioner union demanded that the employees at the Mission

plant be allowed to retain the benefits under the June 1968 agreement and be allowed to follow their work to the Industry plant. The employer refused, and took the position, which it still maintains, that any Mission employees hired at the Industry plant would be considered new employees at the Industry plant and as such entitled only to benefits as new employees under the collective bargaining agreement between the employer and Teamsters Local 196, which union was the collective bargaining representative at the Industry plant. Petitioner union requested arbitration of the dispute raised by its demands but the employer refused to arbitrate the issue, whereupon the instant proceeding to compel arbitration was initiated.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals Decision Is in Conflict With Applicable Decisions of This Court.

The Court of Appeals determined, *inter alia*, that arbitration should not be ordered because any arbitration award in favor of petitioner would contravene national labor policy and therefore would not be enforced by a court. The Court of Appeals relied on its earlier decision in *Int'l Assn. of Machinists v. Howmet Corp.*, 466 F. 2d 1249, 1253-1255 (9th Cir. 1972).

The decision of the Court of Appeals conflicts with the decisions of this Court in the *Steelworkers Trilogy** and *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 84 S. Ct. 909 (1964).

The *Steelworkers* Trilogy established that the policy of the national labor law could be effectuated only if arbitration, "the means chosen by the parties for settlement of their grievances under the collective bargaining agreement is given full play" (*United Steelworkers of America v. American Mfg. Co., supra*, at 566). In its Trilogy decisions, this Court held that a court's only function with respect to a petition to compel arbitration is to determine whether the claimed grievance is, on its face, governed by the agreement. (*Id.* at 567-568.)

In the instant case, the Court of Appeals exceeded this narrow function and in so doing seriously jeopardized the arbitration process. Moreover, the Court of

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**United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564, 80 S. Ct. 1343 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S. Ct. 1347 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358 (1960).

Appeals arrogated to itself a function expressly reserved by this Court to the arbitrator.

It is precisely this type of judicial interference in the arbitral process which this Court has sought to prevent. In *United Steelworkers of America v. American Mfg. Co., supra,* at 568, the Court rejected the notion that a court could decline to compel arbitration of even frivolous grievances:

> "The processing of frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware." (See also footnote 6 at 568.)

Weighing the mere possibility that an arbitrator's award may be unenforceable, against the strong federal policy in favor of arbitration, requires a resolution in favor of arbitration in the instant case. Indeed, this is the precise resolution of the balancing of interests adopted in *John Wiley & Sons, Inc. v. Livingston,* 376 U.S. 543, 84 S. Ct. 909 (1964). In *Wiley,* a corporate reorganization (merger) posed the problem of what rights the employees of the old organization had in the new organization and whether such a dispute was arbitrable under a pre-existing collective bargaining agreement with the union representing the employees of the old organization. This Court specifically foresaw the problem that an arbitration award might interfere with the rights of the original employees of the new organization, but determined that "the mere possibility of such problems cannot cut off the union's right to press the employees' claims in arbitration" and that "[w]hile it would be premature at this stage to speculate on how to avoid such hypothetical problems, we have little doubt that within the flexible procedures of arbi-

tration a solution can be reached which would avoid disturbing labor relations in the Wiley plant." (*Id.* footnote 5 at 551.)

In *Monroe Sander Corp. v. Livingston*, 377 F. 2d 6 (2d Cir., 1967) cert. denied 389 U.S. 831, 88 S. Ct. 97 (1967), as in this case, the employer closed one plant and transferred its work to the second plant. The closed plant was represented by a union and the other plant was not. The union demanded arbitration (under its collective bargaining agreement) of the rights of the employees at the closed plant to jobs at the other plant. The court applying the *Wiley* principles, ordered arbitration of the union's claim to jobs even though it appeared that no new jobs would be available. In ordering arbitration the court discussed the possibility that an arbitrator's award might interfere with the rights of the unorganized employees, but, as in *Wiley*, held that the arbitrator should be given an opportunity to fashion an appropriate award, and that the court should intervene only if an award were issued which in fact contravened national labor policy.

A rule which permits a court to examine the merits of a possible arbitration award prior to its issuance will have the undesirable effect of encouraging pre-arbitration challenges to awards, delaying arbitration for years, increasing the cost of dispute resolution, and thus undermining the arbitration process itself.

The serious dangers which inhere in the road opened by the Court of Appeals are illustrated in the very

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circumstances of this case. The Court of Appeals was in fact incorrect in assuming that any award in favor of petitioner would not be enforceable because it would necessarily interfere with the rights of the employees at the Industry plant.

Although the petitioner's demand for arbitration is very broad, it also necessarily includes the limited demand of the right to follow the work from the Mission plant to the Industry plant. Thus, while it might be argued that an award giving job and seniority preference to former Mission employees at the Industry plant in derogation of the existing rights of Industry employees would be an unjustified interference with the rights of the Industry employees, it is clear, for example, that an award which provides that the Mission employees have job rights in any new jobs which may be created at the Industry plant as a result of the transfer of their work to the Industry plant would in no way interfere with or diminish the rights and benefits of the Industry employees.*

Moreover, the significant issue is not the scope of the demands made in arbitration and whether those demands conflict with national labor policy, but the scope of the relief which might be awarded by an arbitrator and whether that relief conflicts with national

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*We do not concede that an award which gives seniority or job preference to the employees of the closed plant at the other plant would necessarily contravene national labor policy. Depending on the facts of the case, dovetailing of the seniority of the two groups of employees or other equitable adjustment of the interests of the two groups might be proper. (See Note, 66 Col. L. Rev. 967 (1966).)

labor policy. Thus, even though a party might demand certain relief, an arbitrator may fashion relief quite different from that demanded and relief which is wholly consistent with national labor policy. While we have suggested only one solution which the arbitrator could adopt without interfering with the rights of the Industry employees, there are, no doubt, other solutions to the problem which could benefit the Mission plant employees without harming the Industry employees. Indeed, one of the reasons which impelled this Court to favor arbitration as the primary means of solving labor disputes is the expertise of labor arbitrators, their knowledge of industrial life, and their ability to fashion imaginative solutions appropriate for the particular problem in its industrial setting.

The Court of Appeals further failed to consider the concern of national labor policy for employee security in situations such as this where industrial reorganization, over which the employee has no control, leaves him jobless. Unless petitioner union is permitted to arbitrate the instant dispute, the Mission plant employees are without any job rights at the Industry plant even though new jobs may be created at the Industry plant as a result of the transfer of their work from the Mission plant to the Industry plant. Without arbitration, the employer is free to refuse to hire all Mission employees at its Industry plant even though jobs may be available and even though the collective bargaining agreement with the petitioner may require him to hire the Mission employees. The ruling of the Court of Appeals thus leaves the Mission employees without a remedy for what may be a wilful breach of a critical provision of the collective bargaining agreement.

2. The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court.

In *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 84 S. Ct. 909 (1964), this Court held that when a business, the employees of which are represented by a union, is merged with another business, the employees of which are not represented by a union, the union is entitled to arbitrate the rights of its members in the new business under a pre-merger collective bargaining agreement.* *Wiley* did not consider the question of whether arbitration should be ordered if a different union represents the employees of the other business involved in the merger, or, as here, of the reorganized plant.

The Court of Appeals in the instant case held that because a different union represents the employees at the reorganized plant, arbitration may not be ordered. The Court of Appeals for the Second Circuit reached a similar result under somewhat different circumstances in *McGuire v. Humble Oil & Refining Co.*, 355 F. 2d 352 (2d Cir. 1965), cert. denied 384 U.S. 988, 86 S. Ct. 1889 (1966), but in a later case, *Monroe Sander Corp. v. Livingston, supra*, appeared to question the correctness of that decision, citing Note, 66 Col. L. Rev. 967 (1966), which strongly criticized *McGuire*.

The issue of whether arbitration should be required when there is a different union representing the employees at the reorganized plant needs clarification by

Monroe Sander Corp. v. Livingston, supra, held that the *Wiley* rule applies when the employer closes one plant and transfers its operations to another plant as well as when two businesses are merged.

this Court. We believe the proper rule to be that the *Wiley* principle that arbitration is appropriate applies whether or not there is another union at the employer's plant to which work and equipment are transferred.

Wiley reaffirmed the rule established by the *Steelworkers Trilogy* that arbitration should be rejected only if other "considerations compellingly so demand." (*Wiley, supra,* at 550-551.) In this case, no considerations exist which compellingly demand a rejection of arbitration. Indeed, in this case, as in *Wiley,* relevant considerations demand that arbitration be ordered.

A comparison of the relevant considerations in *Wiley* and this case demonstrates that the result in this case should be the same as in *Wiley.* Clearly, the Mission employees in this case are at least as much in need of protection as were the employees for whom the union was seeking arbitration in *Wiley.* As in *Wiley,* unless petitioner union is permitted to represent the employees' interests, there will be no union to represent these interests since the Industry union cannot represent the Mission employees unless and until they are employed at that plant.

The considerations which the Court of Appeals relied on in rejecting arbitration are neither real nor compelling. The court assumed that arbitration would cause industrial strife at the Industry plant because it would interfere with the exclusive bargaining representative's right to represent Industry employees and because any award favorable to Mission employees would necessarily be harmful to Industry employees. Such strife, however, is wholly illusory both because the Industry union does not represent Mission employees not yet employed at the Industry plant and because an

award in favor of the Mission employees in the form described earlier could not in any way injure Industry employees. The most such an award would do is to give Mission employees priority as to newly created Industry jobs over outsiders.

Concededly, a serious legal issue exists with respect to an arbitrator's right to issue an award in derogation of the rights of employees at a plant to which work and equipment are transferred. That issue exists whether or not there is a union at that plant. There are a number of solutions which this Court should consider. Clearly, the solution adopted by the court below, that the employees at the plant which is shut down lose all of their rights when there is a union at the other plant is the worst possible one. That solution is particularly anomalous since those same employees' rights are preserved where the other plant is non-union.

At the very least the employees are entitled to have their rights under their contract determined by an arbitrator. If the arbitrator determines that such rights exist, he may fashion remedies which do not interfere with the contract rights of the other employees, including the award of damages. He may also issue an award which appears to affect the rights of others and allow the employer to attempt to resolve the problem with the other employees or their representative. The court could, if necessary, stay enforcement of the award while the parties attempt to resolve whatever problems may arise. Normally, such problems would be resolved once the parties' rights were determined. In any event, where the employer has entered into conflicting agreements and granted conflicting rights to two groups of employees, some procedure must be developed whereby all affected

parties will have some measure of protection. One approach, which has been suggested, and which has considerable merit, is tripartite arbitration.

Whatever the ultimate resolution of these problems, it seems clear that in view of the unsettled and conflicting state of the law and in view of the increasing number of mergers, consolidations, plant closings and relocations which affect the basic job rights of innumerable workers, this Court should set forth rules which will permit an orderly and equitable method of resolving such disputes.

Conclusion.

For the foregoing reasons, it is urged that this petition for writ of certiorari be granted.

Respectfully submitted,

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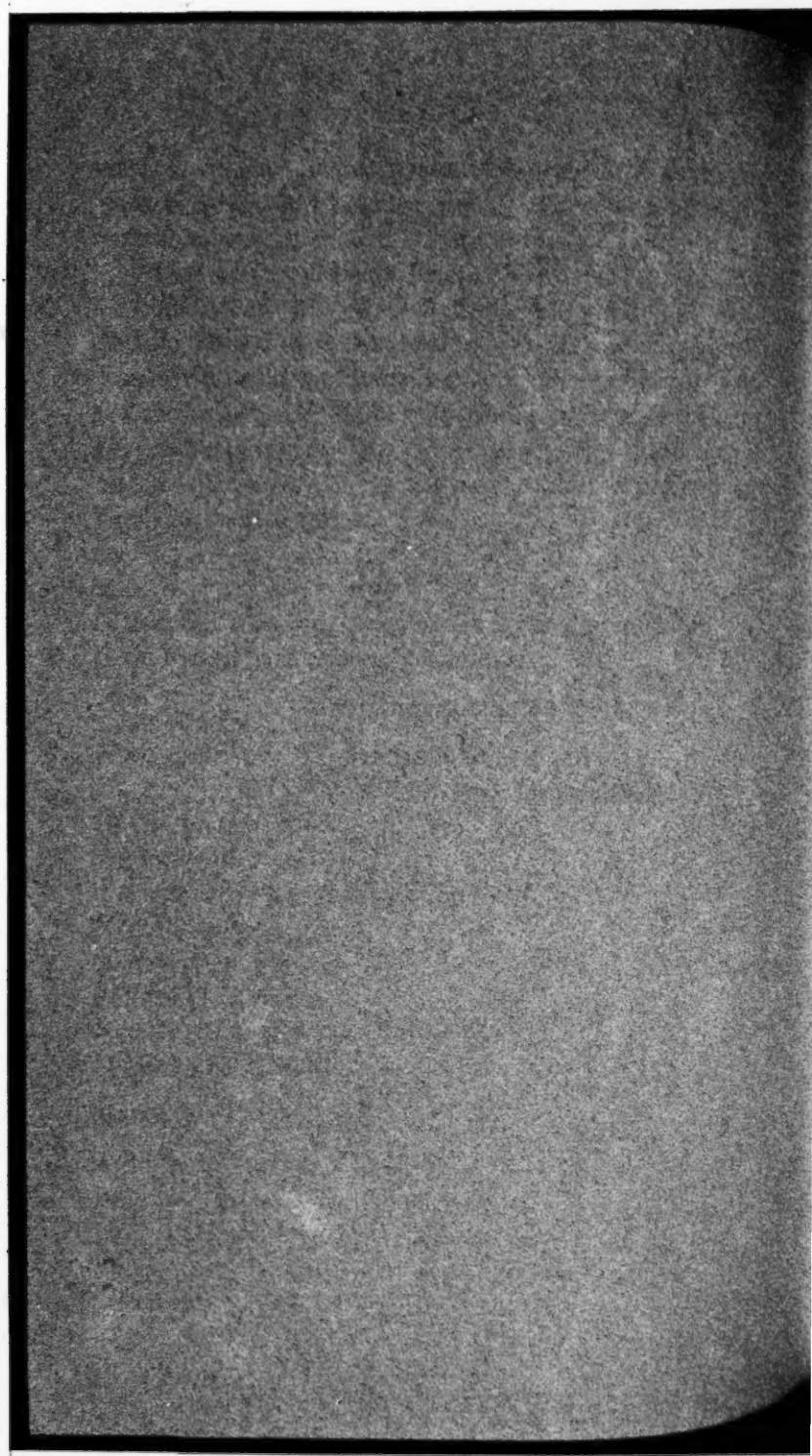
March 2, 1973.



APPENDIX A.

In the United States Court of Appeals, for the Ninth Circuit.

Stove, Furnace and Allied Appliance Workers International Union of North America, AFL-CIO, Local 123-B, Plaintiff-Appellee, vs. Gaffers & Sattler, Inc., Defendant-Appellant. No. 26,942.

On Appeal from the United States District Court for the Central District of California.

Filed: Dec. 5, 1972.

Before: MERRILL and GOODWIN, Circuit Judges, and SKOPIL, District Judge*

Per Curiam:

Gaffers & Sattler appeals from an order directing it to submit to arbitration under its collective bargaining contract with appellee union.

The identical issue here presented—whether it was proper to order arbitration under the circumstances—on facts remarkably similar to those before us was recently decided by this court in *International Association of Machinists v. Howmet Corp.*, 466 F.2d 1249 (9th Cir. Sep. 11, 1972). There, as here, we were faced with employer successorship; closure of one plant; efforts of the bargaining representative at the closed plant to enforce its contract as to its members employed at a second plant in disregard of that plant's bargaining representative and contract.

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*Honorable Otto R. Skopil, Jr., United States District Judge of Oregon, sitting by designation.

There we held that under these circumstances arbitration should not be compelled, because "An award issued by the arbitrator which gave the union any relief on these issues would, we believe, foster rather than alleviate industrial disharmony by forcing the employer to arbitrate with one union issues which touched the very heart of the employer's collective bargaining agreement with another union." ..... F.2d at .....

Reversed and remanded with instructions that these proceedings be dismissed.

APPENDIX B.

Order Directing Arbitration.

United States District Court, Central District of California.

Stove, Furnace & Allied Appliance Workers, International Union of North America, AFL-CIO, Local 123B, Petitioner, v. Gaffers & Sattler, Inc., Respondent. Civil Action No. 70-1844-HP.

Filed: Oct. 26, 1970.

This cause having been submitted to the Court for decision on October 8, 1970:

And the Court having considered the petition, response, exhibits, memoranda and supplemental memoranda of points and authorities, and having heard oral argument of counsel;

And it appearing to the Court that the grievance of which arbitration is demanded, namely,

> "That Union protests the Company's position that after October 1, 1970, the Agreement between the Company and the Union will not apply to a re-located site of the Plant in the City of Industry. The Union takes the position that the Agreement in its entirety, every Section and clause thereof, applies and will apply to the Company's operations in the City of Industry Plant and that the removal of machinery, equipment and manufacturing processes, employees' supervision and all other accouterments of production, constitutes a plant relocation and not the cessation of operations and, therefore, the contract between the Union and the Company will apply to the City of Industry plant or a portion thereof, which is a re-location of the Mission Facilities Plant."

constitutes a dispute as to the application of the Collective Bargaining Agreement of July 1, 1968, between the parties, as defined in Article VIII (A) of that agreement.

IT IS ORDERED that respondent immediately proceed to arbitration of this grievance, in the manner provided in Article VIII (C) of said Collective Bargaining Agreement.

IT IS FURTHER ORDERED that petitioner recover of respondent its costs of action.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order, by United States mail, upon the attorneys of record for the parties appearing in this cause.

Dated: October 26, 1970.

Harry Pregerson
United States District Judge

Findings of Fact and Conclusions of Law.

United States District Court, Central District of California.

Stove, Furnace & Allied Appliance Workers, International Union of North America, AFL-CIO, Local 123-B, Petitioner, v. Gaffers & Sattler, Inc. Respondent. Civil Action No. 70-0844-HP.

This cause came on regularly for hearing on September 28, 1970 before the Court, and the Court having considered the Petition, response, exhibits, memoranda and supplemental memoranda of Points and Authorities, and having heard the arguments offered by the respective parties, and the cause having been submitted for decision, and the Court being fully advised of the premises, makes the following:

FINDINGS OF FACT

It is true that:

1. Petitioner is a labor organization with offices in Los Angeles County, California.

2. At all times herein relevant the respondent was and is in industry affecting commerce within the meaning of Title III, Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. 185, 61 Stat. 156.

3. The petitioner was and is at all times relevant an unincorporated association functioning as a labor organization within the meaning of Title III, Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. 185 61 Stat. 156.

4. Petitioner and respondent entered into a written Collective Bargaining Agreement on or about July 1,

1968 covering the wages, hours and working conditions of the respondent's employees at its Mission plant located at 12611 South Crenshaw Boulevard, Hawthorne, California, and that said Agreement was in full force and effect at all times material hereto.

5. A dispute has arisen between the petitioner and respondent as to the application of the Collective Bargaining Agreement of July 1, 1968, as defined in Article VIII (A) of that Agreement.

6. Petitioner has filed a timely grievance as follows:

> "The Union protests the Company's position that after October 1, 1970, the Agreement between the Company and the Union will not apply to a relocated site of the Plant in the City of Industry. The Union takes the position that the Agreement in its entirety, every Section and clause thereof, applies and will apply to the Company's operations of machinery, equipment and manufacturing processes, employees' supervision and all other accouterments of production, constitutes a plant relocation and not the cessation of operations and, therefore, the contract between the Union and the Company will apply to the City of Industry plant or a portion thereof, which is a re-location of the Mission Facilities Plant."

7. Said grievance has not been resolved through the procedures set forth in Article VIII (B), and there exists a dispute as to the meaning, application or interpretation of the Agreement and the grievance is a proper subject for arbitration.

8. The petitioner has refused to submit the grievance to arbitration as required by Article VIII (C) of the Agreement.

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9. The respondent is required to arbitrate the aforesaid grievance in accordance with the terms and provisions set forth in Article VIII (C) of said Collective Bargaining Agreement.

From the foregoing facts, the Court makes the following:

CONCLUSIONS OF LAW

1. The petitioner is an unincorporated association within the meaning of Title III, Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. 185 61 Stat. 156.

2. Respondent is an industry affecting commerce within the meaning of Title III, Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. 185 61 Stat. 156, and this Court has jurisdiction by virtue of the provisions of the aforementioned Act.

3. A Collective Bargaining Agreement between the parties was entered into July 1, 1968, has been and is in full force and effect at all times herein relevant.

4. The petitioner filed a timely grievance as follows:

> "The Union protests the Company's position that after October 1, 1970, the Agreement between the Company and the Union will not apply to a re-located site of the Plant in the City of Industry. The Union takes the position that the Agreement in its entirety, every Section and clause thereof, applies and will apply to the Company's operations of machinery, equipment and manufacturing processes, employees' Supervision and all other accouterments of production, constitutes a plant re-location and not the cessation of operations and,

therefore, the contract between the Union and the Company will apply to the City of Industry plant or a portion thereof, which is a re-location of the Mission Facilities Plant."

Said grievance is subject to arbitration pursuant to Article VIII (A). The petitioner is entitled to have said grievance submitted to arbitration in the manner provided in Article VIII (C) of the Collective Bargaining Agreement.

5. That Judgment be entered in favor of the petitioner based upon the Findings of Fact and Conclusions of Law. Dated October 26, 1970.

HARRY PREGERSON
UNITED STATES DISTRICT JUDGE

Approved as to form:
TYRE & KAMINS
BY

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IN THE

Supreme Court of the United States

October Term, 1972
No. 72-1205

STOVE, FURNACE & ALLIED APPLIANCE WORKERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, LOCAL 123-B,

Petitioner,

vs.

GAFFERS & SATTLER, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

Opinions Below.

The opinion of the Court of Appeals (Pet. App. A., pp. 1-2)* is reported at 470 F.2d 860 (9th Cir. 1972). The District Court's Order Directing Arbitration (Pet. App. B., pp. 3-4)** is reported at .... F. Supp. ...., 82 L.R.R.M. 2222 (C.D. Cal. 1970). The "Findings of Fact and Conclusions of Law" set forth at pages 5 through 8 of Appendix B to the Petition were not acted upon by the District Court. On December 2, 1970, pursuant to a stipulation of the parties, the District Court

*"Pet. App. A., pp. 1-2" refers to the Appendix A contained in the Petition. Similar designations will be used herein.

**Appendix B to the Petition.

ordered that Petitioner's proposed "Findings of Fact and Conclusions of Law" and Respondent's "Objections to Proposed Findings of Fact and Conclusions of Law" be deleted from the "Designation of Record on Appeal" which had been filed with the District Court.

Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented.

1. Is arbitration permissible where the labor organization seeking to compel arbitration is attempting to use it as a vehicle for obtaining contractual rights in a bargaining unit lawfully represented by another labor organization?

2. Is arbitration permissible where the granting of any of the relief sought by the grievance would necessarily compel the employer against whom arbitration is sought to violate Sections 8(a)(2), 8(a)(5), and 9(a) of the Labor Management Relations Act of 1947, as amended?

3. Is arbitration permissible where the labor organization seeking to compel arbitration is attempting to use it as a means of negativing the effect of final, adverse determinations by the National Labor Relations Board of the same issues which it seeks to have arbitrated?

Statutes Involved.

Section 301 of the Labor Management Relations Act of 1947, as amended (hereafter the "Act"), 29 U.S.C. Sec. 151, *et seq.*, is set forth at page 3 of the Petition. Sections 8(a)(2), 8(a)(5), and 9(a) are set forth at Appendix A, *infra*, p. 1.

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Statement.

Petitioner's statement (Pet., p. 4, *et seq.*) requires considerable amplification.

During the negotiations which resulted in the agreement for the term July 1, 1968-June 30, 1971 between Petitioner and Respondent's predecessor (hereafter the "Mission Agreement"), Respondent's predecessor repeatedly advised Petitioner that its plant at Hawthorne, California (hereafter the "Mission Plant") might be closed during the term of the new agreement. Accordingly, the parties included a severance pay clause in the Mission Agreement which provided, *inter alia*, a formula for severance payments to employees terminated in the event of the sale of the Mission Plant or the cessation of its operations.

Several months after the Mission Agreement became effective, Magic Chef, Inc., which had for several years operated a plant at Industry, California (hereafter the "Industry Plant"), purchased the assets of Gaffers & Sattler which then consisted of the Mission Plant and another located in Los Angeles, California (hereafter the "Utility Plant"). After the acquisition, Magic Chef combined the Industry, Mission, and Utility Plants into its Gaffers & Sattler, Inc. subsidiary, the Respondent here.

Respondent assumed all labor contracts in effect at the plants which it had purchased, including the Mission Agreement which was applicable to certain production employees at the Mission Plant, and an

agreement between Respondent's predecessor and Teamsters Local No. 196 (hereafter "Local 196"), which applied to certain truck and forklift drivers and warehousemen at the Mission Plant.

In August, 1969, Local 196 achieved recognition as the bargaining agent for all of the Industry Plant's production, maintenance, warehouse, shipping and truck driver employees (hereafter the "Industry bargaining unit"). The following month Local 196 entered into a collective bargaining agreement (hereafter the Industry Agreement) with Respondent applicable to said employees for a term expiring on September 30, 1972.

On October 2, 1969, Petitioner's parent labor organization filed unfair labor practice charges with the Director of the Board's 21st Regional Office (hereafter the "Director") in Case No. 21-CA-8821, alleging, *inter alia,* that the Industry Agreement was unlawful under Section 8(a)(2) of the Act. Three weeks later the charges were dismissed for lack of merit.

On May 12, 1970, Petitioner submitted the grievance which the District Court subsequently ordered Respondent to arbitrate (Pet. App. B., p. 3). The following day Petitioner made a written demand that Respondent recognize it as the bargaining representative of all employees in the Industry bargaining unit. On May 25, 1970, Respondent rejected the recognition demand on the ground, *inter alia,* that since it was party to a lawful contract with Local 196 covering

the Industry bargaining unit, compliance with said demand would be unlawful. Respondent also rejected Petitioner's grievance as non-arbitrable on the same date.

On June 4, 1970, Petitioner filed new unfair labor practice charges with the Director in Case No. 21-CA-9287, alleging that Respondent's refusal to accede to its May 13th recognition demand violated Sections 8(a)(1) and (5) of the Act. The Director dismissed these charges on June 22, 1970, and on August 5, 1970, the Board's General Counsel denied Petitioner's appeal from the Director's action. Notice of the General Counsel's action was received by the parties on August 10, 1970. On August 19, 1970, less than 10 days after being apprised of the Board's action, but more than four months after the Respondent had denied the arbitrability of its grievance, Petitioner filed its Petition to Compel Arbitration which was granted by the District Court in October, 1970.

On July 24, 1972, Respondent's parent labor organization filed a representation petition with the Director in Case No. 21-RC-12813, seeking an election among the employees in the Industry bargaining unit. On September 7, 1972, the Board affirmed the Director's August 8, 1972 dismissal of the petition on the ground that it was barred by the Industry Agreement. On September 1, 1972, Respondent's parent labor organization again petitioned for an election among the employees in the Industry bargaining unit in Case No. 21-RC-12867. The Director dismissed this petition on the same ground on October 18, 1972.

During oral argument the Court below received copies of both petitions, the Board's Administrative Ruling AD-216 in Case No. 21-RC-12813, and the Director's decision in Case No. 21-RC-12867. Subsequent to the decision below, the Board affirmed the Director's action in Case No. 21-RC-12867 in Administrative Ruling AD-245.

On December 5, 1972, the Court below entered its *per curiam* decision, finding the facts here indistinguishable from those in *International Association of Machinists v. Howmet Corp.*, 466 F.2d 1249 (9th Cir. 1972), and concluding that arbitration should not be compelled as an award granting any relief on the issues before it would foster, rather than alleviate industrial disharmony.

REASONS FOR DENYING THE WRIT.

I.

The Decision Below Is Clearly Correct.

Each federal appeals court which has answered the issues present here has arrived at the same result: arbitration may not be used by one labor organization to secure representation or contractual rights in a bargaining unit lawfully represented by another where an award favoring the grieving union would stimulate industrial strife or compel the commission of unfair labor practices. *McGuire v. Humble Oil & Refining Co.*, 355 F.2d 352 (2d Cir. 1966), *cert. denied*, 384 U.S. 988 (1966); *Printing Specialties Union No. 447 v. Pride Papers-Aaronson Bros. Paper Corp.*, 445 F.2d 361 (2d Cir. 1971), *cert. denied*, 404 U.S. 1001 (1971); *Local 464, Bakery Workers Union v. Hershey Chocolate Corp.*, 433 F.2d 926 (3rd Cir. 1970), *aff'g* 310 F. Supp. 1182 (M.D. Pa. 1970); *Owens-Illinois, Inc. v. District 65, Retail Store Union*, 393 F.2d 932 (2d Cir. 1968), *aff'g* 276 F. Supp. 740 (S.D. N.Y. 1967).

The fact that Petitioner is attempting to use arbitration as a means of overturning adverse Board decisions on the same issues raised by its grievance removes any question as to the propriety of the decision below. *McGuire v. Humble Oil & Refining Co., supra; Local 464, Bakery Workers Union v. Hershey Chocolate Corp., supra.*

Petitioner attempts to avert the rule of these cases by abandoning the grievance about which the parties litigated below—Petitioner's protest against Respondent's refusal to impose the Mission Agreement on the

Industry bargaining unit*—and substituting for it here new demands for preferential hiring of Petitioner's members at the Industry Plant (Pet., p. 10) or monetary damages against Respondent for closing the Mission Plant (Pet., p. 13). Petitioner's stated justification** for this tactic is untenable as it would preclude any rational basis for decision-making in cases where arbitrability is at issue.

Another compelling ground for denying arbitration which the Court below did not find necessary to reach is the fact that the Board has determined finally and adversely the representation dispute which is the subject of the grievance. Since the Board's exclusive authority ultimately to resolve representation issues either through the processing of refusal-to-bargain charges under Section 8(a)(5) of the Act, or representation petitions under Section 9, has been exercised here, an award granting any of the relief sought by the grievance would be meaningless and unenforceable. *Carey v.*

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*The grievance states:

"That Union protests the Company's position that after October 1, 1970, the Agreement between the Company and the Union will not apply to a re-located site of the Plant in the City of Industry. The Union takes the position that the Agreement in its entirety, every Section and clause thereof, applies and will apply to the Company's operations in the City of Industry Plant and that the removal of machinery, equipment and manufacturing processes, employees' supervision and all other accouterments of production, constitutes a plant relocation and not the cessation of operations and, therefore, the contract between the Union and the Company will apply to the City of Industry plant or a portion thereof, which is a re-location of the Mission Facilities Plant." (Pet. App.. B., p. 3)

**". . . the significant issue is not the scope of the *demands made in arbitration* and whether *those demands* conflict with national labor policy, but the scope of the relief which *might* be awarded by an arbitrator and whether *that relief* conflicts with national labor policy." (Pet., pp. 9-10) (Emphasis added).

Westinghouse Electric Corp., 375 U.S. 261 (1964); *McGuire v. Humble Oil & Refining Co., supra; Local 7-210, OCAW v. Union Tank Car Co.*, ... F. 2d ...., 82 L.R.R.M. 2823 (7th Cir. 1973).

Although Petitioner concedes that "a serious legal issue exists with respect to an arbitrator's right to issue an award in derogation of the rights of employees at a plant to which work and equipment are transferred" (Pet., p. 13), it appears to contend that the existence of the Industry Agreement, which barred the processing of the petitions in Cases Nos. 21-RC-12813 and 21-RC-12867, should not materially affect the resolution of that issue. The fallacy of this argument is that Respondent has a statutory obligation exclusively to recognize Local 196 in the Industry bargaining unit, and would violate Sections 8(a)(2), 8(a)(5), and 9(a) of the Act by granting any part of the grievance.

Petitioner's contention that arbitration is necessary to protect the rights of its members with respect to the Mission Plant's closing is equally fallacious. The grievance does not involve Respondent's obligation to ameliorate the impact of the Mission Plant's closing on the Mission Plant's employees, and the Petition makes no showing that a remedy on this subject exists in the provisions of the Mission Agreement. *Local 464, Bakery Workers Union v. Hershey Chocolate Corp., supra.*

Petitioner's remedy, if any, with respect to the impact on its members of the Mission Plant's closing would have been in bargaining with Respondent on that subject as required by Section 8(a)(5) of the Act. See, *e.g., N.L.R.B. v. Royal Plating and Polishing Co. Inc.*, 350 F.2d 191 (3rd Cir. 1965).

II.

There Is No Conflict of Decision.

Contrary to Petitioner's assertions (Pet., p. 6), the decision below is entirely consistent with *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964); *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

The basis for accommodating the decision below to *Wiley* is clearly spelled out by this Court in *Wiley:*

> "The fact that the Union does not represent a majority of an appropriate bargaining unit in Wiley does not prevent it from representing those employees who are covered by the agreement which is in dispute and out of which Wiley's duty to arbitrate arises. [Citations omitted] *There is no problem of conflict with another union* [Citation omitted] *since Wiley had no contract* with any union covering the unit of employees which received the former Interscience employees." (376 U.S. 551, n.5) (Emphasis added).

In *Howmet, supra,* the Court summarized the teaching of the *Steelworkers Trilogy* as follows:

> ". . . the underlying objective of the policy favoring the resolution of disputes by arbitration is that of avoiding industrial strife and promoting industrial harmony. . . ." (466 F.2d at 1253).

As the Court below found that granting arbitration here would "foster rather than alleviate industrial disharmony" (470 F.2d at 860), its refusal to permit

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arbitration here is entirely consistent with the *Trilogy*. As the Court stated in *Howmet:*

> ". . . when situations arise, as here, in which the objective of avoiding industrial strife and disharmony would not be served by compelling arbitration, a court has the obligation to examine the potential consequences of compelling arbitration and to tailor its order accordingly . . ." (466 F.2d at 1253).

There is no conflict between *Monroe Sander Corp. v. Livingston,* 377 F.2d 6 (2d Cir. 1967), *cert. denied,* 389 U.S. 831 (1967), and either the decision below or *McGuire v. Humble Oil & Refining Co., supra.* The facts here duplicate those in *Howmet,* the holding of which is based on *McGuire* and *Owens-Illinois, Inc. v. District 65, Retail Store Union, supra.* In *Monroe Sander* the Court of Appeals for the Second Circuit found no difficulty in harmonizing its decision with *McGuire:*

> "Citing the presence of a union at the successor, [in *McGuire*] a fact which the Supreme Court noted was not present in *Wiley,* and the unit determination by the Labor Board, we refused to compel Humble to arbitrate. . . . Our rationale was that the conflicting interests . . . would lead to 'unrest and dissatisfaction' and that to order Humble to arbitrate . . . might be tantamount to forcing Humble to bargain with a minority union in violation of the Labor Act." (377 F.2d at 13).

In short, the statutory rights of a lawful incumbent union such as Local 196 in the Industry bargaining unit, outweigh those of a competitor such as Petitioner which is attempting to use arbitration as a

means of gaining recognition rights in the incumbent's bargaining unit. Contrary to Petitioner's suggestion (Pet., pp. 11-12) this principle is well-established, and, as indicated by this Court's refusal to review the Second Circuit's decisions in *McGuire v. Humble Oil & Refining Co., supra,* and *Printing Specialties Union No. 447 v. Pride Papers-Aaronson Bros. Paper Corp., supra,* it requires no further clarification.

Petitioner's suggestion (Pet., p. 11) that the Second Circuit appeared to question the correctness of *McGuire* in *Monroe Sander* is set to rest by its subsequent decision in *Owens-Illinois, Inc. v. District 65, Retail Store Union, supra,* where it affirmed, *per curiam,* the District Court's decision (276 F. Supp. 740 (S.D. N.Y. 1970)), which relied on *McGuire* to deny arbitration in circumstances not distinguishable from those here.

Conclusion.

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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TYRE & KAMINS,
JOHN W. PRAGER, JR.,
Of Counsel.

APPENDIX A.

Sec. 8. (a) It shall be an unfair labor practice for an employer—

* * *

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

* * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

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Respondent.

PETITIONER'S REPLY BRIEF.

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Respondent.

PETITIONER'S REPLY BRIEF.

I.
Introduction.

Respondent's Brief in Opposition to the Petition raises several points which we believe require clarification. Respondent argues that the instant case involves the question of whether arbitration is permissible in a case in which the grievance sought to be arbitrated has been finally determined by the National Labor Relations Board. (Respondent's Brief, p. 2.) As we demonstrate in Section II, the Board, in fact, did not consider or determine the issues which petitioner seeks to have arbitrated and respondent's citation of four Board rulings which purport to deal with such issues is inapposite.

Respondent also argues that the instant grievance is not arbitrable. (Respondent's Brief, p. 9.) In Section III, we demonstrate that the grievance is arbitrable under this Court's holdings in its *Steel Workers Trilogy* decisions.

II.

The National Labor Relations Board Has Not Considered or Determined the Rights of Petitioner Union or Its Members Under the Collective Bargaining Agreement.

Respondent argues that petitioner seeks to arbitrate an issue which has already been conclusively determined by the National Labor Relations Board and cites four Board rulings which purportedly support its argument. A review of the pertinent events in the instant case and an analysis of the Board's action in each of the proceedings cited by respondent demonstrates that the issues which petitioner seeks to arbitrate were never considered or determined by the Board.

The dispute in the instant case resulted from the closing of respondent's Mission plant and the transfer of some of its equipment and all or some of its operations to the site of the Industry plant. Petitioner union represents the former employees at the Mission plant and in this proceeding seeks arbitration under its collective bargaining agreement with respondent of its rights and the rights of its members at the Industry site as a result of the transfer. Respondent takes the position that arbitration should not be ordered because a different union represents the employees at the Industry plant.

Respondent first announced the closing of the Mission plant in November, 1969. The closing of the Mission

plant and transfer to the Industry plant took place about a year later, in October, 1970. The Board proceedings which respondent cites relate to events which span a time period both before and after the announcement of and the actual plant transfer and in no way deal with the rights at the Industry plant of the former Mission plant employees or petitioner under the collective bargaining agreement which is the subject of the arbitration here involved.

The first Board proceeding which respondent cites, Case No. 21-CA-8821, involves events which occurred prior to any announced change at the Mission plant. In August, 1969, Teamsters Local No. 196 achieved recognition as the bargaining agent for certain employees at the Industry plant. Respondent and Local No. 196 entered into a collective bargaining agreement in September, 1969. On October 2, 1969, the petitioner's International Union (not petitioner) filed an unfair labor practice charge with the Board, alleging that Local No. 196 did not represent a majority of the employees at the Industry plant and that the employer had given illegal assistance to Local No. 196 by its August, 1969 recognition and its September, 1969 agreement. On October 23, 1969, the Regional Director declined to issue a complaint in the matter.

Petitioner was neither a party to that proceeding, nor did the proceeding involve any matters relating to the transfer of the Mission plant, equipment and operations, which transfer occurred a year later.

The next Board proceeding cited by respondent is an unfair labor practice charge filed by petitioner on June 4, 1970, four months before the transfer of the Mission plant, alleging that petitioner represented a majority

of the employees at the Industry plant and that failure to recognize and bargain with petitioner violated the National Labor Relations Act (Case No. 21-CA-9287). On June 27, 1970, the Regional Director declined to issue a complaint because at the time petitioner requested recognition, May 13, 1970, there was a recognized incumbent union at the Industry plant (Local No. 196). (The recognition of that incumbent union had occurred more than six months prior to the filing of the charge, and any attack on that recognition was barred by the six month time limit in Section 10(b) of the Act (29 U.S.C. Section 160(b).) The Director's action was upheld on appeal to the Board's General Counsel.

The above Board proceeding took place prior to the transfer of the Mission plant and did not involve any questions relating to the rights of the Mission employees or petitioner union as a result of such transfer or any question relating to the collective bargaining agreement here involved. The Board proceeding related to the Industry plant as organized on June 4, 1970, before the transfer of the Mission plant to the Industry site, and merely involved petitioner's allegation that at that time it represented a majority of the Industry employees.

The demand for arbitration in the instant case involves contract and other rights resulting from and arising out of an existing collective bargaining agreement between petitioner and respondent.

The last two Board proceedings cited by respondent were representation petitions filed by the International, and not by petitioner, seeking an election at the Industry plant. The petition filed on July 14, 1972 (21-RC-12813) was dismissed because it was not timely filed.

The petition filed on September 1, 1972 was also dismissed on the same ground. Neither, therefore, considered the merits of the appropriate bargaining representative at the Industry plant and neither involved in any way the question whether Mission employees had contractually established job rights at the Industry plant.

In conclusion, the Board has never considered or determined the issues involved in the grievance which petitioner seeks to arbitrate: the rights at the Industry site of petitioner union and the former Mission employees arising after October, 1970, the date of the transfer of the Mission plant to the Industry site, and resulting from the collective bargaining agreement between petitioner and respondent.

Even assuming, *arguendo,* however, that, as respondent erroneously contends, the representation issue had been decided by the Board, the issue of job rights has undisputedly never been before the Board. Clearly, therefore, the Board proceedings are irrelevant to the instant demand for arbitration and cannot be a bar to the arbitration of claims to job rights never considered by the Board in any proceeding.

The thrust of respondent's defense and the view of the Ninth Circuit is simply that the transfer rights and other job interests which the Mission employees have with respect to the Industry plant under a valid collective bargaining agreement cannot as a matter of policy be arbitrated and instead must be forfeited merely because the Teamsters represent the employees generally at the plant to which their work has been transferred. Such a harsh, unjust, and irrational conclusion is neither required by nor consistent with national labor policy or the *Trilogy* decisions.

III.

Petitioner's Grievance Raises an Arbitrable Dispute Under the Collective Bargaining Agreement.

Respondent argues that arbitration should not be ordered because petitioner "makes no showing that a remedy on this subject exists in the provisions of the Mission Agreement" (Respondent's Brief, p. 9), apparently contending that the grievance is not arbitrable. This Court's decisions in *United Steel Workers of America v. American Mfg. Co.*, 363 U.S. 564, 80 S. Ct. 1343 (1960) and *United Steel Workers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 80 S. Ct. 1347 (1960) make clear, however, that the grievance in the instant case is arbitrable. Thus, this Court has held that a party to a collective bargaining agreement is entitled to arbitration of a grievance if a claim is, on its face, governed by the contract. The merits of the claim are not to be considered by the court in determining whether arbitration should be ordered. As stated by this Court in the *Warrior* case:

> "In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause is quite broad." (*Id.* at 584-585.)

The contract in the instant case contains a broad arbitration clause subjecting all "dispute[s] arising as to the meaning, application or interpretation of this Agreement" to arbitration. The contract contains no exclusionary clause. Respondent has not produced "forceful evidence of a purpose to exclude" from arbi-

tration the issue of the rights of former Mission employees upon relocation of the Mission plant.

Specific language supports petitioner's position that the subject of the dispute is governed by the contract. Thus, the contract provides that "[t]he provisions, terms, or obligations herein contained shall not be affected or changed in any respect by sale, *transfer*, or assignment of the Company with respect to its operations at the plant located at 12611 South Crenshaw Boulevard, Hawthorne, California". (Emphasis added.)

Application of this contract provision to the transfer would entitle the former Mission employees to the job protection they seek. For example, Article X, Section A of the contract provides that seniority entitles an employee to preference in layoff, rehire, *job openings*, promotions and choice of shifts. Section D of that same article provides that layoff will be determined by, among other factors, seniority. Thus, the demand of the former Mission employees to job rights in any new jobs which may be created at the Industry plant as a result of the transfer of their work to that plant is specifically provided for under the contract.

Indeed, respondent has conceded that the rights of the affected employees are provided for by the contract. Respondent, however, contends that Article VI, Section G does not apply to the situation and that Article VI, Section H, providing for severance pay "if it becomes necessary to terminate all or any part of its [respondent's] operation", controls.

Whether the plant was transferred or the operation was terminated is, according to this Court's *Steel Workers Trilogy* decisions, a question to be determined by the arbitrator and not by a court. Indeed, even if it

appears to a court that no specific provision of the contract governs the resolution of the grievance, arbitration should still be ordered. All matters agreed upon between the parties to a collective bargaining agreement are not necessarily covered by specific written provisions in the agreement and gaps in the written agreement may be filled in by the understanding of the parties or the practice in the industry as found by an arbitrator. (*United Steel Workers of America v. Warrior & Gulf Nav. Co., supra.*)

In our petition we demonstrated that an arbitrator could fashion a remedy in favor of the former employees of the Mission plant without interfering with the rights of the employees at the Industry plant. We also suggested that even where the employer has entered into conflicting agreements with two different groups of employees, some procedure should be developed whereby all affected parties have some measure of protection, and noted that tripartite arbitration was one approach which has considerable merit. (Petition, pp. 13-14.)

This Court, as well as lower federal and state courts, has approved tripartite arbitration. Thus, in *Transportation-Comm. Emp. U. v. Union Pac. R.R. Co.*, 385 U.S. 158, 87 S. Ct. 369 (1966), this Court held that tripartite arbitration was required under the Railway Labor Act where the award in an arbitration with one union might conflict with the rights of another union. Likewise, the Court of Appeals for the Second Circuit has ordered tripartite arbitration in a similar situation not involving the Railway Labor Act brought pursuant to Section 301 of the Labor Management Relations Act of 1947, as amended (29 U.S.C. Section 185,

et seq.) (*Columbia Broad. Sys. Inc. v. American Record & Broad. Assn.*, 414 F. 2d 1326 (2d Cir. 1969). The Court of Appeals for the Third Circuit has also approved tripartite arbitration in situations of conflict between two unions and the employer with regard to the same matter. (*Window Glass Cutters League v. American St. Gobian Corp.*, 428 F. 2d 353 (3d Cir. 1970.) Lower courts have also ordered tripartite arbitration in appropriate circumstances. (*Textile Workers Union of America v. Scottex Corp.*, 344 Fed. Supp. 243 (S.D. N.Y. 1972); *N.Y. Mailers Union No. 6 v. N.Y. News*, 326 N.Y.S.2d 369 (N.Y. Sup. Ct. 1972).)

We urge this Court to grant certiorari and consider whether national labor policy requires, as the Ninth Circuit concluded, that workers with contractually established job rights must not only forfeit those rights but also be deprived of their right to arbitration whenever a different union is entrenched at the plant to which their work is transferred.* We suggest that to the contrary, where there is an incumbent union at the second plant, national labor policy requires either that the arbitration agreement be honored in the normal manner or that the tripartite procedure recognized by this Court in *Transportation-Comm. Emp. U. v. Union Pac. R.R. Co., supra*, to be applied to such plant transfer disputes.

Whatever resolution this Court deems appropriate, certainly this is a matter of major significance to workers throughout this country who believe (without justification if the Ninth Circuit is correct) that the contracts which protect their job rights against such arbi-

*In our petition we demonstrated that such workers do not lose their job rights or their right to arbitration where the plant to which their work is transferred is non-union.

trary deprivations are enforceable. Finally, we submit that the increase in plant closings, mergers, consolidations and relocations occurring throughout this nation requires this Court to establish a rational and consistent policy for resolving the disputes affecting employees' basic rights which result from such serious economic dislocations.

Respectfully submitted,

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